

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
MBHB Case No. 01-1015**

In the Application of:)
Raman et al.)
Serial No. 10/004,116)
Filed: November 2, 2001)
For: Method and System for Load Balancing)
Examiner: Avellino, Joseph E.
Group Art Unit: 2143
Confirmation No.: 8024
Customer No.: 20306

Attn: Office of Petitions
Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

PETITION UNDER 37 C.F.R. 1.137(b)

This statement is being filed in support of the Petition to Revive the Application under 37 CFR 1.137(b) for unintentional delay. If the Office deems that additional fees are due, the Office is authorized to charge deposit account No. 13-2490.

1. I am a patent agent at McDonnell Boehnen Hulbert & Berghoff LLP ("MBHB"), current representatives of the assignee of record. I have conducted a reasonable investigation into the facts and circumstances underlying the Application's apparent abandonment on October 10, 2008 for failure to respond to a final Office Action dated April 9, 2008.

2. MBHB filed the application on behalf of the assignee of record, and has represented the assignee of record with respect to prosecution matters related to the application.

3. MBHB received a non-final office action for the application on November 16, 2007. MBHB responded to this office action by filing claim amendments and accompanying

arguments on February 15, 2008. Neither MBHB nor the assignee of record received any further postal mail or electronic mail regarding the application after February 15, 2008.

4. On or about December 8, 2008, MBHB received a voicemail from Mr. Joseph Avellino, the Examiner of record for the application. The voicemail indicated that the Office had not received a response to the final office action dated April 9, 2008.

5. After receiving the voicemail from Mr. Avellino, both MBHB and the assignee of record attempted to access the application in PAIR, but were denied access to the application.

6. I have found no evidence to indicate that the power of attorney that allowed MBHB to prosecute the application, or the power of attorney that allowed the assignee to prosecute the application had been lost or revoked.

7. After a review of the available facts surrounding the Application's apparent abandonment, I am not aware of any evidence of intentional delay in filing the required reply from the due date for the Office Communication until the filing of this petition to revive under 37 CFR 1.137(b).

8. At the time of the apparent abandonment, neither MBHB nor the assignee of record were aware that the final Office Action had been issued.

9. MBHB did not intend to abandon the application. Furthermore, MBHB has conferred with the assignee of record and has confirmed that the assignee of record did not intend to abandon the application.

10. On December 18, 2008, MBHB filed, on behalf of the assignee of record, an updated power of attorney for the application.

11. On or about December 26, 2008, MBHB received access to the application in PAIR. I confirmed that the application's image file wrapper indicates that a final office action was mailed on April 9, 2008. However, I also noted that PAIR did not indicate that the application has gone abandoned.

12. I made several attempts during the month of December to contact Mr. Avellino and his supervisor via phone to inquire about the status of the application. These attempts were made on or about December 12, 2008 and December 18, 2008. I left voice mail messages for Mr. Avellino and his supervisor.

13. On January 7, 2009, Mr. Avellino left a message for me. The message indicated that he did not know why neither MBHB nor the assignee of record did not receive the final office action. Furthermore, the message indicated that Mr. Avellino would be issuing a Notice of Abandonment for the application.

14. On January 9, 2008, I logged in to private PAIR to view the status of the application. I found that, as of January 8, 2008, the status of the application had been changed to "Abandoned -- Failure to Respond to an Office Action."

15. As of January 12, 2009, a Notice of Abandonment was available on private PAIR. The Notice of Abandonment indicated a mailing date of January 12, 2009.

16. Thus, I submit that after a reasonable investigation into the facts surrounding the application's apparently abandonment and to the best of my knowledge, there is no evidence

contrary to the assertion that the entire delay in filing the required reply from the due date for the reply until the filing of this petition to revive was unintentional.

Respectfully submitted,

Date: January 23, 2009

/Michael S. Borella/
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